HENRY A/L ARUMANATHAN

v.

DEPUTY MINISTER OF HOME AFFAIRS & 2 ORS.

HIGH COURT MALAYA, ALOR SETAR
TUAN MOHD. HISHAMUDIN BIN MOHD. YUNUS JC
[CRIMINAL APPLICATION NO. 44-3-94]
1 OCTOBER 1994

PREVENTIVE DETENTION: *Habeas corpus - Applicant detained under detention order issued by Minister of Home Affairs - Section 4(1) of Emergency (Public Order and Prevention of Crime) Ord. 1969 - Whether any procedural defects in the detention - Allegation of facts mentioned a single act of murder and not a series of murders - Detention order did not state applicant is likely to commit murder in the future - Purpose of detention order - Whether "for suppression of violence" or for "the prevention of crimes involving violence" - Powers of Court - Whether Court has power to examine the factual basis of Minister's declared satisfaction in detention order.*

This was an application for *habeas corpus*. The applicant was detained pursuant to an order issued by the first respondent under s. 4(1) Emergency (Public Order & Prevention of Crime) Ordinance 1969. The order stated that the purpose of the detention was to prevent the applicant from acting in any manner prejudicial to public order. Before the learned Judge the applicant argued that in making the order thus the respondent had acted mechanically as the allegations of fact as disclosed by the respondent pursuant to s. 4(4) of the Ordinance was inconsistent with the stated purpose of the detention order. The issue was whether the submission concerned point of procedure and therefore allowable, or whether the argument had in fact questioned the propriety of the respondent's judgment in issuing the order and therefore prohibited by ss. 7C and 7D of the Ordinance.

Held:

[1] The applicant's contention does not merely concern a point of procedure. The question of whether or not the actual basis of the order, as disclosed by the Minister supports or is consistent with the minister's purpose in ordering the detention clearly strikes at the exercise of judgment on the part of the Minister in determining the purpose of the detention. By his argument the applicant thus invites this Court to examine the factual basis of the Minister's declared satisfaction in the detention order. Sections 7C and 7D clearly preclude the Court from embarking upon such examination.

[Application dismissed]

Legislation referred to:

Emergency (Public Order and Prevention of Crime) Ordinance, 1969 ss. 4(1), 4(4)(a) & (b), 7C & 7D

For the applicants - George John; M/s. George John & Co.
For the respondents - Nor Bahari; Senior Federal Counsel

JUDGMENT

Mohd. Hishamudin bin Mohd. Yunus JC:

This is an application for a writ of *habeas corpus* and has been consolidated with four other similar applications namely,

(1) 44-4-94;
(2) 44-5-94;
(3) 44-6-94;
(4) 44-7-9d;

At the commencement of the hearing on 11 September 1994, it had been agreed by both Encik George John, Counsel for all the applicants, and Encik Nor Bahari, Senior Federal Counsel, for the respondents, that the above four applications would be bound by the decision of the Court in this application.

The applicant, Henry a/l Arumanathan, had been arrested and detained under a detention order issued by the Minister of Home Affairs made pursuant to s. 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance, 1969. The provision reads:

Power to order detention.

4. (1) If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a "detention order") directing that that person be detained for any period not exceeding two years.

The detention order states:

Ordinan Darurat (Ketenteraman Awam Dan
Mencegah Jenayah), 1969

Perintah Tahanan

[Seksyen 4(1)]

Kepada
Penguasa Kanan,
Pusat Pemulihan Akhlak,
Simpang Rengam, Johor

Ketua Polis Negara,
Bukit Aman - 50560 Kuala Lumpur

Semua Pegawai Polis Diraja Malaysia yang berkenaan.

Bahawasanya saya, Menteri Dalam Negeri berpuashati yang Perintah ini adalah perlu dibuat ke atas orang yang namanya tersebut di bawah ini dengan tujuan hendak mencegah beliau daripada melakukan perbuatan dengan apa-apa cara yang memudaratkan ketenteraman awam.

Nama	Nombor Kad Pengenalan
Henry a/l Arumanathan	130564

Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya di bawah Seksyen 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah), 1969, maka saya mengarahkan dengan perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun mulai dari 22 Jun 1994 di Pusat Pemulihan Akhlak, Simpang Rengam, Johor atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 22 Jun 1994.

t.t.

(Dato Megat Junid bin Megat Ayob)
Timbalan Menteri Dalam Negeri
Malaysia

The grounds of detention, which s. 4(4)(a) of the Ordinance requires the detainee to be informed of, state:

Alasan-Alasan Yang Atasnya Perintah Itu Dibuat

Kamu adalah seorang penjenayah yang telah melakukan kegiatan-kegiatan jenayah yang berunsur kekerasan di mana telah mengancam keselamatan dan ketenteraman awam.

And the allegations of fact which were made known to the detainee pursuant to section 4(4)(b) state:

Tuduhan-Tuduhan Yang Perintah Itu Berasaskan

Bahawa kamu, pada 11 Mac 1994 jam lebih kurang 10.00 malam, bersama-sama beberapa orang rakan yang lain telah membunuh seorang lelaki Melayu di Taman Rimba, Alor Setar, Kedah.

Before I proceed to consider the submissions it is pertinent at this juncture to refer to sections 7C and 7D of the Ordinance. These provisions read:

Judicial review of act or decision of Yang di-Pertuan Agong and Minister.

7C. (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Ordinance, save in regard to any question on compliance with any procedural requirement in this Ordinance governing such act or decision.

(2) The exception in regard to any question on compliance with any procedural requirement in subsection (1) shall not apply where the grounds are as described in s. 4C.

Interpretation of "judicial review".

7D. In this Ordinance, "judicial review" includes proceeding instituted by way of

(a) an application for any of the prerogative orders of mandamus, prohibition and certiorari;

(b) an application for a declaration or an injunction;

(c) a writ of habeas corpus; and

(d) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di-Pertuan Agong or by the Minister in accordance with this Ordinance.

Encik George, at the outset of his submission, concedes that, by reason of the above provisions, he could only submit on procedural defects. And he submits that there is a procedural defect which renders the order *ultra vire*s the Ordinance. He argues that since the allegations of fact only mention of a single act of murder and not of a series of murder, and do not state that the applicant is likely to commit murder in the future therefore, for the Minister to state in the order that the purpose of the detention is to prevent ("mencegah") the applicant from acting in any manner prejudicial to public order, is illogical: you cannot prevent something that had already been committed; it only goes to show that the Minister had not applied his mind to the facts and had acted in a mechanical fashion in making the order. However, learned Counsel, having made such a criticism, did not proceed to state what, in his view, should have been the appropriate "purpose" to be stated in the order. Should the purpose be "for the suppression of violence", or should it be for "the prevention of crimes involving violence" - to use the words as found in s. 4(1)? Instead, Encik George only says (to quote him), "If I may add, no one can tell the Minister how to draft

the order or the allegations of fact." And thereafter, he goes on to remark that (again to quote learned Counsel) "the Minister had used the right Ordinance for the wrong purpose".

In my view, and with respect to learned Counsel, I cannot accept his contention that his submission concerns only a point of procedure. I fail to see how the question as to whether or not the factual basis of the order, as disclosed by the Minister supports or is consistent with the Minister's purpose (in ordering the detention) could be regarded as a procedural issue (and hence falls within the Court's power to review). To my mind learned Counsel's criticism strikes not at the procedural aspect of the detention order but at the exercise of judgment on the part of the Minister in determining the purpose of the detention. In other words, learned Counsel, by his argument, is in effect, inviting this Court to examine the factual basis of the Minister's declared satisfaction in the detention order. I must decline the invitation. For clearly ss. 7C and 7D preclude this Court from embarking upon such an examination.

Accordingly this application is dismissed. The four other kindred applications shall abide by this decision.